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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,959	12/09/2003	Osamu Tachizawa	246310US0	2738
22850	7590	10/15/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER CHANNAVAJALA, LAKSHMI SARADA	
			ART UNIT	PAPER NUMBER
			1611	
			NOTIFICATION DATE	DELIVERY MODE
			10/15/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/729,959

**Applicant(s)**

TACHIZAWA ET AL.

**Examiner**

Lakshmi S. Channavajjala

**Art Unit**

1611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date 8-13-08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Receipt of foreign translation, terminal disclaimer and response dated 8-11-08 and IDS dated 8-13-08 is acknowledged.

Claims 1-20 are pending in the instant application.

#### ***Terminal Disclaimer***

1. The terminal disclaimer filed on 8-13-08 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 6,914,038 and 7,307,050 has been reviewed and is accepted. The terminal disclaimer has been recorded.
2. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Applicants submitted a translation of the Brief submitted to European Patent Office by Cognis GmbH, which recited documents pertinent to the instant claims. Based on the reference cited in the Brief, which is also listed on PTO-1440 dated 8-13-08 by applicants in the instant application, the following new rejection has been applied to the instant claims:

#### ***Claim Rejections - 35 USC § 102***

3. Claims 1-3, 5-16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Flick, Ernest (Cosmetics and Toiletry Formulations, submitted on PTO-1449 dated 8-13-08) as evidenced by Orion Chemie.

Flick teaches clear liquid conditioning shampoos and pearlescent shampoos comprising Standapol ES-1, which is sodium laureth sulfate.

The translation of a Brief submitted to European Patent Office by Cognis GmbH describes that ES-1 is made of C12-C14 fatty alcohols with a homolog distribution of ethoxylation of  $n=0$  is 35.43%,  $n=1$  is 21.88,  $n=2$  is 15.49 and the remaining proportions up to 100% wt are formed by fatty alcohol ether sulfate with 3 or more parts of ethylene oxide. Thus, the percentage distribution of different ethoxylated sulfates fall within the ranges in claims 1 and 6-9. For the amounts of the sulfate, the compositions of Flick describe 30% and 10%, which is within the claimed amounts of claims 1, 10 and 11. For the claim 3 cationic polymers, the clear liquid conditioning shampoo on page 598 of Flick shows 2% polyquart H, a PEG-15 tallow polyamine, which is a cationic conditioning polymer see US 4,314,807 (see col. 22, shampoo formulation) and is within the range of claim 16. For claims 2, 12 and 13, Flick teaches cocoamide DEA and Laureth-9 and for the claimed amphoteric surfactants, Flick teaches betaines such as cocamidopropyl betaine, all of which are also described in the instant specification. For the claimed pearlescent agents (5 and 18), Flick teaches glycol stearate and glycolo distearate in the compositions of page 542 shampoo composition, which also contains the above components i.e., ES-1, nonionic and amphoteric surfactants. Hence Flick anticipates instant claims.

***Claim Rejections - 35 USC § 103***

4. Claims 4 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flick, as applied to claims 1-3, 5-16 and 18-20 above, and further in view of US 5,714,446 to Bartz.

Flick does not teach silicones in the composition. Bartz teaches hair conditioning shampoo compositions comprising ethoxylated sulfate surfactants and a nonionic silicone conditioning agent (see claims, abstract and examples). The silicone conditioning agent in the composition of '446 is in the same amount as that claimed in the instant application. '446 suggests 0.1% to 10% of silicone (col. 10, l 1-5), which is within the claimed range. It would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made to employ the silicone conditioning agent of '446 in the composition of Flick because '446 teaches that silicones are essential to improve the hair conditioning (col. 9, L 50-60) and suggests that the combination of the surfactant, silicone conditioner and a cationic conditioning polymer provides excellent cleaning and also hair conditioning benefit.

5. Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flick.

Flick fails to teach the claimed pH ranges. Instant claims recite a pH after dilution of the composition by 20 times. Flick teaches adjusting pH of the composition to 6.5 +/- 0.5 or 5.5-6.5 (pages 598 and 642) and hence the

burden is on applicants to show that the pH of the compositions of Flick, which recite the claimed ingredients, do not possess the claimed pH 6 for claim 19, after diluting it 20 times. Even though Flick fails to teach the pH of 3.5 to 4.5, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made to optimize the pH of the compositions of Flick such that the compositions are suitable for use as hair conditioning shampoos.

### ***Response to Arguments***

6. Applicant's arguments filed 8-11-08 with respect to rejection of claims 1-20 over a combination of EP 0190010, Cox et al and US 6133212 have been fully considered but are moot in view of the new grounds of rejection. Further based on the evidence of the priority date for the instant application, the rejection of claims over US 6914038 in view of EP 0190010, Cox et al and US 6133212 has been withdrawn.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -5.30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila G. Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lakshmi S Channavajjala/  
Primary Examiner,  
Art Unit 1611  
October 3, 2008